

leges that the surviving partners have carried on the business under the name and style of the old firm ; and after making expensive improvements from the profits of the concern, they have divided among themselves large annual sums, and it prays that these surviving partners "may be required to pay to the complainant as administratrix, the share of her intestate of the personal property of said concern, as well as his share or portion of the profits which have accrued thereon since his death."

My opinion, therefore, would have been, independently of the opinion of the Court of Appeals, that the complainant had made her election to claim a share of the profits ; and I should not have been prepared to say, that having so elected, she would have been at liberty afterwards to claim interest.

But the Court of Appeals, as I think, have settled this question also. They say, "it was the undoubted privilege of the appellant," (the complainant,) "on the case made by the bill, to demand the profits produced by the employment of her husband's share of the property, from his death to the institution of the suit." And having thus elected to claim profits and not interest, and the general rule being that the party is not at liberty to claim profits for one period and interest for another, I think the complainants must be restricted to a claim for profits, until the 31st of August, 1841, when the business was brought to a close, by the decree for a sale of the property.

An account of profits must, therefore, be taken down to that period, and upon the sum thus found due the complainant, together with the amount due her intestate at his death, interest must be allowed from the date of the decree to the mean day of sale, under said decree.

Besides this claim against the partnership growing out of its indebtedness to the deceased partner, the complainant, the widow of Samuel Hayes, claims a reasonable and just allowance in lieu of her dower interest, in the real estate owned by her husband, and which constituted a part of the partnership property. This real estate, as has been decided by the appellate court, though regarded in a court of equity as personal estate for all partnership purposes, yet in the absence of an ex-